EXHIBIT 5



RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement Subject:

Rachel L. Rawson 03/23/2011 08:21 PM From:

Extension: 67276 (inside Jones Day) or 216-586-7276

To: Alinder, Zachary J.

Cc: "Nelson, Daniel A.", "'Gregory Castanias"", "Howard, Geoff", "'Jane L Froyd", "'Jacqueline K. S. Lee", "'Kenneth J. Krupsky", "Schnall, Matthew D.", "'Nicole Massey", "Brundage, Robert

A."

2 attachments



NYI_4357364_1_Change-Pro Redline - NYI-4349222-9 and NYI-4349222-10.DOC



NYI 4349222 10 SAP Escrow Agreement.DOC

Zac.

We write to follow up on the parties' meet and confer this afternoon regarding use of an escrow agreement as security for the judgment pending appeal. In anticipation of tomorrow's deadline for Defendants to file a Rule 62 motion and to facilitate the parties' discussion of the remaining issues, we provide a summary of these issues and their status below.

First, you conveyed that JP Morgan has now approved Bingham McCutchen's request for a prospective conflict waiver relating to litigation arising out of the escrow agreement. Thus, as confirmed on our meet and confer call, this issue has now been resolved.

Second, the parties further discussed their respective revisions to Section 9(b), which sets forth tax reporting procedures and the limited circumstances under which SAP would indemnify Oracle for tax liabilities arising out of the escrow agreement. As we have discussed, SAP does not believe that any indemnification is necessary, particularly when Oracle has not identified any increased tax risk that either a plain vanilla escrow account or a qualified settlement fund escrow account might pose above and beyond any risk a supersedeas bond might impose. While SAP is willing to entertain a very limited indemnity relating only to SAP's own reporting obligations, it is important to SAP that such indemnity cannot be triggered by unilateral IRS actions. Therefore, during the call, we raised the concern that, despite the current provision pursuant to which SAP would attempt to make a grantor trust election should the IRS deem the escrow account a qualified settlement fund, the IRS may nonetheless take what we believe is the incorrect position that that such an election is invalid. Oracle confirmed that even if the IRS determines that such an election is invalid, SAP will not be found to have breached its agreement (and thus, its obligation to indemnify Oracle for tax liabilities will not be triggered by that event). In light of this discussion, as well as additional edits to Section 9(b) discussed on the call (including Oracle's proposal that SAP covenant that it will provide Oracle its proposed grantor trust election 40 days in advance of filing), the parties will confirm with their respective clients that the language of Section 9(b) is acceptable.

Finally, despite Oracle's previous representation that it may be willing to agree to indemnify JP Morgan for defined losses resulting solely as a result of Oracle's conduct (as provided in Section 8 of SAP's current draft agreement), you confirmed today that Oracle will not agree to such language. You noted that it is unlikely that Oracle's position on this issue will change, but agreed to let us know immediately if it does.

Ultimately, based on the parties' discussion today, we understand that only two issues remain open with respect to the escrow agreement - the tax indemnity language of Section 9(b) and the indemnity language of Section 8. I have attached a revised copy of the Escrow Agreement, together with a copy marked to

show changes from the last draft I distributed, which I believe reflects our agreement other than with respect to Sections 8 and 9(b). I note that I did not make changes to Section 8 requested by you, and acknowledge that remains an open issue. As discussed, the proposed agreement, including the Section 9 tax reporting language, is subject to final approval by both of our clients. The parties acknowledged that if they cannot come to agreement on these issues tomorrow, Defendants will proceed with filing a Rule 62 motion to avoid expiration of the stay on execution of judgment. In that instance, however, Defendants note that they remain willing to continue negotiations with Oracle on these issues to attempt to resolve them without the Court's intervention.

Rachel

Rachel Rawson | Jones Day | 901 Lakeside Avenue Cleveland, OH | 44114| 216-586-7276 (ofc) |216-406-3472 (cell) rlrawson@ionesdav.com

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Fr "Alinder, Zachary J." <zachary.alinder@bingham.com>
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   "'Rachel L. Rawson" <rlrawson@JonesDay.com>
0:
C "'Gregory Castanias"' <gcastanias@JonesDay.com>, "Howard, Geoff" <geoff.howard@bingham.com>, "'Jane L Froyd'"

    <ifroyd@JonesDay.com>, "Jacqueline K. S. Lee" <jkslee@JonesDay.com>, "Nicole Massey" <nmassey@JonesDay.com>,
    "Brundage, Robert A." <robert.brundage@bingham.com>, "Nelson, Daniel A." <daniel.nelson@bingham.com>, "Schnall, Matthew D."

   <m.schnall@bingham.com>, "'Kenneth J. Krupsky" <kjkrupsky@JonesDay.com>
D
   03/23/2011 05:58 PM
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S RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement
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Rachel.

Attached is a further revised version of the draft Escrow Agreement following up on our meet and confer today. This version should reflect most of the proposed revisions and open items discussed on the call, except for those proposed by JPMC that you relayed. Further, as we discussed at the end of the call, the proposed agreement, and in particular the Section 9 tax reporting language, is subject to final approval by both of our clients.

Best regards,

Zac

From: Alinder, Zachary J.

Sent: Wednesday, March 23, 2011 1:58 PM

To: 'Rachel L. Rawson'

Cc: 'Gregory Castanias'; Howard, Geoff; 'Jane L Froyd'; 'Jacqueline K. S. Lee'; Nicole Massey; Brundage,

Robert A.; Nelson, Daniel A.; Schnall, Matthew D.; Kenneth J. Krupsky **Subject:** RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement

Rachel,

In advance of the meet and confer, attached is what I understand to be the current draft of the Escrow Agreement: (1) accepting for the time being the proposed changes following our call yesterday; (2) with some additional minor line edits; (3) with edits to Section 8 showing that Oracle has not agreed to the Indemnity of JPMC; and, (4) inserting what I understand to be the current proposed tax language in Section 9(b)(ii).

Best regards,

Zac

From: Rachel L. Rawson [mailto:rlrawson@JonesDay.com]

Sent: Wednesday, March 23, 2011 1:11 PM

To: Alinder, Zachary J.

Cc: Hinman, Frank; 'Gregory Castanias'; Howard, Geoff; 'Jane L Froyd'; 'Jacqueline K. S. Lee'; Nicole

Massey; Brundage, Robert A.

Subject: RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement

As a reminder, the call in information for 2 Pacific, 4 Chicago, 5 Eastern is

1-866-448-1308 Code 57 424 545.

Rachel

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Fr "Alinder, Zachary J." <zachary.alinder@bingham.com>

To: "'Rachel L. Rawson'" <rlrawson@JonesDay.com>

Cc "Hinman, Frank" <frank.hinman@bingham.com>, "'Gregory Castanias'" <gcastanias@JonesDay.com>, "Howard, Geoff" <geoff.howard@bingham.com>, "'Jane L Froyd'" <jfroyd@JonesDay.com>, "'Jacqueline K. S. Lee'" <jkslee@JonesDay.com>,

"Nicole Massey" <nmassey@JonesDay.com>, "Brundage, Robert A." <robert.brundage@bingham.com>

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Da 03/23/2011 02:04 PM te:

Su RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement bje ct:
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Sure. We can postpone the meet and confer, but to be clear, my understanding was that it was set for 2pm <u>Pacific</u> time, not <u>Eastern</u>. Correct?

From: Rachel L. Rawson [mailto:rlrawson@JonesDay.com]

Sent: Wednesday, March 23, 2011 11:01 AM

To: Alinder, Zachary J.

Cc: Hinman, Frank; 'Gregory Castanias'; Howard, Geoff; 'Jane L Froyd'; 'Jacqueline K. S. Lee'; Nicole

Massey; Brundage, Robert A.

Subject: RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement

On a side note, can we postpone our meet and confer for about 15 minutes to 2:15 NY time?

Yes. I am about to send that email. Thanks, Zac

From: Rachel L. Rawson [mailto:rlrawson@JonesDay.com]

Sent: Wednesday, March 23, 2011 10:52 AM

To: Rachel L. Rawson

Cc: Hinman, Frank; 'Gregory Castanias'; Howard, Geoff; 'Jane L Froyd'; 'Jacqueline K. S. Lee'; Nicole

Massey; Brundage, Robert A.; Alinder, Zachary J.

Subject: RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement

Hi Zac,

JPM still has not heard from Bingham on the waiver issue. Are you planning still to contact them?

Thanks Rachel

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rlrawson@jonesday.com

Fr om Rachel L. Rawson/JonesDay

:

To "Alinder, Zachary J." <zachary.alinder@bingham.com>

Cc "Hinman, Frank" <frank.hinman@bingham.com>, "'Gregory Castanias'" <gcastanias@JonesDay.com>, "Howard, Geoff" <geoff.howard@bingham.com>, "'Jane L Froyd'" <jfroyd@JonesDay.com>, "'Jacqueline K. S. Lee'" <jkslee@JonesDay.com>, "Brundage, Robert A." <robert.brundage@bingham.com>, Nicole Massey/JonesDay@JonesDay

Da 03/22/2011 06:19 PM

te:

Su RE: Oracle v SAP -- Follow up wrt Revised Draft Agreement

bje

ct:

Zac,

Thanks for passing on to us the names of the Bingham contacts at JPM. We have recently heard from JP

Morgan that per your request, JP Morgan is willing to enter a limited waiver relating to litigation that might ensue from the escrow agreement. However, company policy requires that such waivers be requested in writing. Therefore, we ask that you or one of your counterparts e-mail JPM with a formal waiver request. We have been told that so long as the request is for the narrow prospective conflict waiver set forth above, JP Morgan will approve the request. The best contact person at JP Morgan is in-house counsel Andrew Keen. His e-mail is andrew.keen@chase.com. We trust this resolves the conflict issue we have been discussing, and other than Section 9(b), which we are continuing to work on, this should address what we think is the last substantive issue on the Escrow Agreement.

Rachel

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Rachel Rawson | Jones Day | 901 Lakeside Avenue Cleveland, OH | 44114| 216-586-7276 (ofc) |216-406-3472 (cell) rlrawson@jonesday.com

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[attachment "Revised 3-23-11_SAP Escrow Agreement.DOC" deleted by Rachel L. Rawson/JonesDay]

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